



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 1, 2014

Mr. Ruben Mendez
mendezr@umail.iu.edu

Re: Formal Complaint 14-FC-56; Alleged Violation of the Access to Public Records Act by the City of Lake Station

Dear Mr. Mendez,

This advisory opinion is in response to your formal complaint alleging the City of Lake Station ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has provided a response to your complaint via Ms. Brenda Samuels, Clerk-Treasurer. Her response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 19, 2014. I have granted priority status to your complaint.

BACKGROUND

Your complaint dated March 19, 2014 alleges the City of Lake Station violated the Access to Public Records Act by not timely providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On November 15, 2010 and again on March 13, 2014, you served requests upon the City for copies of your personnel file. You were denied in 2010 on the grounds personnel files were not available for dissemination.¹ As for the March 13, 2014 alleged denial, the City acknowledged your request on the same day stating they would begin a search for your personnel file and notify you when it was ready. They estimated it would take a number of weeks due to multiple departments having information responsive to your request.

Dissatisfied with the City's proposed timeline for production, you filed your formal complaint. You requested priority status citing a deposition in Federal Court scheduled for April 3, 2014 wherein these records would presumably be germane to the proceeding.

¹ This denial will not be addressed by this Opinion as it falls outside of the deadline for filing a Formal Complaint pursuant to Ind. Code § 5-14-5-7.

The City, upon receiving your complaint from my Office, produced a number of documents to you in anticipation they would satisfy your request. You have indicated they are not the totality of the documents you seek. The City contends the additional documentation either does not exist or else they have not been able to find them.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The City of Lake Station is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The APRA only imposes a timeframe for production that would be considered “reasonable”. Ind. Code § 5-14-3-3. Ideally, public records would be available for inspection at a moment’s notice. Realistically, however, an agency cannot be expected to produce documentation on demand. You made your request approximately fifteen (15) business days prior to your scheduled deposition. It appears the City has made best efforts to provide you the documentation you need.

You suggest there is more information in the custody of the City other than what was produced. I cannot conclusively determine if such information exists. If it does, then the City would be obligated to provide you with the entirety of your personnel file pursuant to Ind. Code § 5-14-3-4(b)(8)(C), contrary to the 2010 denial. The City has claimed they have no more information to produce. The only potential violation in the current instance is if any information was destroyed in contravention to Ind. Code § 5-14-3-7 or other local retention schedule.

CONCLUSION

It appears the City has searched for, retrieved, and produced all records in their custody responsive to your request. If there are files missing from the personnel department, the City may be in violation of the APRA for not adequately protecting against the loss or destruction of records, however, I cannot conclusively determine if that is the case. For

the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the City of Lake Station has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Brenda Samuels